

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JOSEPH MORENO

Plaintiff,

v.

JAMES BACA; et al.,

Defendants.

3:11-cv-0179-LRH-WGC

ORDER

Before the court is plaintiff Joseph Moreno's ("Moreno") motion for a Certificate of Appealability. Doc. #116.¹

On May 12, 2011, Moreno filed a civil rights complaint against defendants alleging an Eight Amendment failure to protect claim. *See* Doc. #16. Defendants moved for summary judgment on his claim (Doc. #84) which was granted by the court (Doc. #113). In response, Moreno appealed the court's order. *See* Doc. #115. Along with his appeal, Moreno filed the present motion for a certificate of appealability. Doc. #116.

The court has reviewed Moreno's motion and finds that it is without merit. Moreno misconstrues the nature of his complaint. Moreno did not, as he claims in his motion, file a complaint under 28 U.S.C. § 2254. Rather, Moreno initiated a civil rights action under

¹ Refers to the court's docket number.

1 Section 1983. *See* Doc. ##15, 16. As such, a certificate of appealability is not required to appeal the
2 court's order. *See* 28 U.S.C. § 2253 (requiring certificates of appealability prior to appealing a
3 proceeding only under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")). A
4 civil rights action under Section 1983 is not a proceeding under AEDPA. Therefore, the court shall
5 deny Moreno's motion.

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7 IT IS THEREFORE ORDERED that plaintiff's motion for a Certificate of Appealability
8 (Doc. #116) is DENIED.

9 IT IS SO ORDERED.

10 DATED this 18th day of October, 2013.

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13 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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